

**TAB 3: 1979 and 1991 Science and Technology Agreements with China**

AGREEMENT BETWEEN  
THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
AND  
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA  
ON COOPERATION IN SCIENCE AND TECHNOLOGY

The Government of the United States of America and the Government of the People's Republic of China (hereinafter referred to as the Contracting Parties);

Acting in the spirit of the Joint Communiqué on the Establishment of Diplomatic Relations between the United States of America and the People's Republic of China;<sup>[1]</sup>

Recognizing that cooperation in the fields of science and technology can promote the well-being and prosperity of both countries;

Affirming that such cooperation can strengthen friendly relations between both countries;

Wishing to establish closer and more regular cooperation between scientific and technical entities and personnel in both countries;

Have agreed as follows:

ARTICLE 1

1. The Contracting Parties shall develop cooperation under this Agreement on the basis of equality, reciprocity and mutual benefit.

2. The principal objective of this Agreement is to provide broad opportunities for cooperation in scientific and technological fields of mutual interest, thereby promoting the progress of science and technology for the benefit of both countries and of mankind.

<sup>1</sup> Department of State Bulletin, Jan. 1979, p. 25.

## ARTICLE 2

Cooperation under this Agreement may be undertaken in the fields of agriculture, energy, space, health, environment, earth sciences, engineering, and such other areas of science and technology and their management as may be mutually agreed, as well as educational and scholarly exchange.

## ARTICLE 3

Cooperation under this Agreement may include:

- a. Exchange of scientists, scholars, specialists and students;
- b. Exchange of scientific, scholarly, and technological information and documentation;
- c. Joint planning and implementation of programs and projects;
- d. Joint research, development and testing, and exchange of research results and experience between cooperating entities;
- e. Organization of joint courses, conferences and symposia;
- f. Other forms of scientific and technological cooperation as may be mutually agreed.

## ARTICLE 4

Pursuant to the objectives of this Agreement, the Contracting Parties shall encourage and facilitate, as appropriate, the development of contacts and cooperation between government agencies, universities, organizations, institutions, and other entities of both countries, and the conclusion of accords between such bodies for the conduct of cooperative activities. Both sides will further promote, consistent with such cooperation and where appropriate, mutually beneficial bilateral economic activities.

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## ARTICLE 5

Specific accords implementing this Agreement may cover the subjects of cooperation, procedures to be followed, treatment of intellectual property, funding and other appropriate matters. With respect to funding, costs shall be borne as mutually agreed. All cooperative activities under this Agreement shall be subject to the availability of funds.

## ARTICLE 6

Cooperative activities under this Agreement shall be subject to the laws and regulations in each country.

## ARTICLE 7

Each Contracting Party shall, with respect to cooperative activities under this Agreement, use its best efforts to facilitate prompt entry into and exit from its territory of equipment and personnel of the other side, and also to provide access to relevant geographic areas, institutions, data and materials.

## ARTICLE 8

Scientific and technological information derived from cooperative activities under this Agreement may be made available, unless otherwise agreed in an implementing accord under Article 5, to the world scientific community through customary channels and in accordance with the normal procedures of the participating entities.

## ARTICLE 9

Scientists, technical experts, and entities of third countries or international organizations may be invited, upon mutual consent of both sides, to participate in projects and programs being carried out under this Agreement.

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## ARTICLE 10

1. The Contracting Parties shall establish a US-PRC Joint Commission on Scientific and Technological Cooperation, which shall consist of United States and Chinese parts. Each Contracting Party shall designate a co-chairman and its members of the Commission. The Commission shall adopt procedures for its operation, and shall ordinarily meet once a year in the United States and the People's Republic of China alternately.
2. The Joint Commission shall plan and coordinate cooperation in science and technology, and monitor and facilitate such cooperation. The Commission shall also consider proposals for the further development of cooperative activities in specific areas and recommend measures and programs to both sides.
3. To carry out its functions, the Commission may when necessary create temporary or permanent joint subcommittees or working groups.
4. During the period between meetings of the Commission, additions or amendments may be made to already approved cooperative activities, as may be mutually agreed.
5. To assist the Joint Commission, each Contracting Party shall designate an Executive Agent. The Executive Agent on the United States side shall be the Office of Science and Technology Policy; and on the side of the People's Republic of China, the State Scientific and Technological Commission. The Executive Agents shall collaborate closely to promote proper implementation of all activities and programs. The Executive Agent of each Contracting Party shall be responsible for coordinating the implementation of its side of such activities and programs.

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## ARTICLE 11

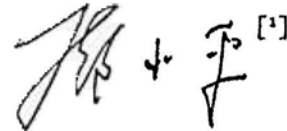
1. This Agreement shall enter into force upon signature and shall remain in force for five years. It may be modified or extended by mutual agreement of the Parties.

2. The termination of this Agreement shall not affect the validity or duration of any implementing accords made under it.

DONE at Washington this 31<sup>st</sup> day of January, 1979, in duplicate in the English and Chinese languages, both equally authentic.

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE  
PEOPLE'S REPUBLIC OF CHINA:

A handwritten signature in cursive script, reading "Jimmy Carter".A handwritten signature in cursive script, reading "Deng Xiaoping" with a superscripted "1" to the right.

<sup>1</sup> Deng Xiaoping.

TIAS 9179

AGREEMENT TO EXTEND AND AMEND  
THE AGREEMENT BETWEEN  
THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
AND  
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA  
ON COOPERATION IN SCIENCE AND TECHNOLOGY

The Government of the United States of America and the  
Government of the People's Republic of China (hereinafter  
referred to as the Parties

In accordance with the provisions of Article 11 of the  
Agreement between the Governments of the two countries on  
Cooperation in Science and Technology the Agreement signed in  
Washington on January 31, 1979, as extended,

In view of the smooth progress of the cooperation between  
the Parties, and

In order to develop further scientific and technological  
cooperation between the two countries,

Have agreed as follows:

1. The Agreement shall be amended to include an annex on the Protection of Intellectual Property (Annex I), which is attached hereto.

2. Article 5 of the Agreement shall be amended to read:

"1. Specific arrangements implementing this Agreement may cover the subjects of cooperation, procedures to be followed, funding and other appropriate matters. With respect to funding, costs shall be borne as mutually agreed. All cooperative activities under this Agreement shall be subject to the availability of funds.

"2. Except as otherwise provided in the specific accords implementing this Agreement, protection of intellectual property and rights thereto will be as set forth in Annex I, which forms an integral part of this Agreement."

3. Article 8 of the Agreement shall be amended to read:

"Scientific and technological information derived from cooperative activities under this Agreement may be made available to the scientific community through customary channels and in accordance with the normal procedures of the participating entities and to the extent not inconsistent with the Annexes and implementing accords."



4. The Agreement shall be extended for another five years effective April 30, 1991.

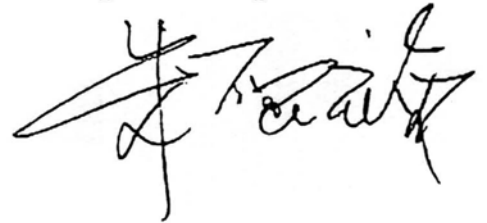
This Agreement shall enter into force upon signature.

Done at Washington this May 22<sup>ND</sup> day of May, 1991, in duplicate, in the English and Chinese languages, both texts being equally authentic.

For the Government of the  
United States of America:

A handwritten signature in black ink, appearing to read "Daniel Gromy".

For the Government of the  
People's Republic of China:

A handwritten signature in black ink, appearing to read "Qiao Zhen".

## ANNEX I - INTELLECTUAL PROPERTY

Pursuant to Article 5 of this Agreement;

The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this Agreement and relevant implementing arrangements. The Parties agree to notify one another in a timely fashion of any inventions or copyrighted works arising under this Agreement and to seek protection for such intellectual property in a timely fashion. Rights to such intellectual property shall be allocated as provided in this Annex.

### I. SCOPE

A. This Annex is applicable to all cooperative activities undertaken pursuant to this Agreement, except as otherwise specifically agreed by the Parties or their designees.

B. For purposes of this Agreement, "intellectual property" shall have the meaning found in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm, July 14, 1967.

C This Annex addresses the allocation of rights, interests, and royalties between the Parties. Each Party shall ensure that the other Party can obtain the rights to intellectual property allocated in accordance with the Annex, by obtaining those rights from its own participants through contracts or other legal means, if necessary. Between a party and its nationals, the ownership of rights and interests in

intellectual property will be determined in accordance with that party's national laws and practices.

D. Disputes concerning intellectual property arising under this Agreement should be resolved through discussions between the concerned participating institutions or, if necessary, the Parties or their designees. Upon mutual agreement of the Parties, a dispute shall be submitted to an arbitral tribunal for binding arbitration in accordance with the applicable international arbitration rules. Unless the Parties or their designees agree otherwise in writing, the arbitration rules of UNCITRAL shall govern.

E. In order to protect copyrighted works created under this Agreement, both Parties shall protect unpublished works against their unauthorized publication and guarantee that, when published, copies of works will be marked with an agreed upon, distinguishing indication as provided in Appendix A to the IPR annex. If one Party, according to its laws, cannot provide protection to the other's works published in non-member countries of the Berne Convention or the UCC, the participating institution of that Party shall make best efforts to assist the other Party in publishing in a Berne or UCC member within 30 days of publication, unless copies of the published work are not received by that institution in a timely manner.

F. For purposes of this Agreement, the term "published works" means works published with the consent of their authors, whatever may be the means of the manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work.

G. Termination or expiration of this Agreement shall not affect rights or obligations under this Annex.

H. Provision of any computer program, whether an application program or operating systems format and whether in source or object code, by one Party the Providing Party to the other Party the Receiving Party] under this Agreement is contingent on the availability of copyright protection for that program in the territory of the receiving Party that is generally equivalent to the protection to which it is entitled in the territory of the Providing Party.

## II. ALLOCATION OF RIGHTS

A. Each Party shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce, and publicly distribute scientific and technical journal articles, reports, and books directly arising from cooperation under this Agreement. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named

B. Rights to all forms of intellectual property, other than those rights described in Section II[A] above, shall be allocated as follows:

1. Visiting researchers, for example, scientists visiting primarily in furtherance of their education, shall receive intellectual property rights under the policies of the host institution. In addition, each visiting researcher named as an inventor shall be entitled to share in a portion of any royalties earned by the host institution from the licensing of such intellectual property.

2. [a] For intellectual property created during joint research, for example, when the Parties, participating institutions, or participating personnel have agreed in advance on the scope of work, each Party shall be entitled to obtain all rights and interests in its own territory. Rights and interests in third countries will be determined in implementing arrangements. If the research is not designated as "joint research" in the relevant implementing arrangements, rights to intellectual property arising from the research will be allocated in accordance with paragraph B[1]. In addition, persons named as inventors shall be entitled to a portion of any royalties earned by the licensing of the property

[b] Notwithstanding the first paragraph above, if a type of intellectual property is protected under the laws of one Party but not the other Party, unless other allocation arrangements are agreed upon by both Parties, the Party whose laws provide for protection shall be entitled to all rights and interests in the Party's own territory and in third countries. Persons named as inventors shall nonetheless be entitled to share a portion of any royalties earned by the institution of the Party whose laws provide for protection from the licensing of such property.

3. [a For inventions made as a result of a program of cooperative activity that involves only the transfer or exchange of information between the Parties, such as by joint meetings, seminars or the exchange of technical reports or papers, the Party whose personnel make the invention the inventing Party has the right to obtain all rights and interests in the invention in all countries.

[b] In any country where the inventing Party decides not to obtain such rights and interests, the other Party has the right to do so.

### III. BUSINESS-CONFIDENTIAL INFORMATION

In the event that information identified in a timely fashion as business-confidential is furnished or created under the Agreement, each Party and its participants shall protect such

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information in accordance with applicable laws, regulations, and administrative practice. Information may be identified as "business-confidential" if a person having the information may derive an economic benefit from it or may obtain a competitive advantage over those who do not have it, the information is not generally known or publicly available from other sources, and the owner has not previously made the information available without imposing in a timely manner an obligation to keep it confidential.

APPENDIX A:

The United States of America marking for the People's Republic of China works:

"This work or article, book, computer program, etc. as appropriate] first published (date), in (country , was created in cooperative activities under the Agreement Between the United States of America and the People's Republic of China for Cooperation in Science and Technology. The authors authorize reproduction of this work, for scholarship, research, and private study, subject to any licenses granted under the Agreement."

The People's Republic of China marking for the United States of America works:

"This copyrighted work or article, book, computer program, etc. as appropriate first published (date), at (place), was created in cooperative activities under the Agreement Between the United States of America and the People's Republic of China for Cooperation in Science and Technology."



April 24, 2001

Excellency:

I have the honor to refer to the Agreement between the Governments of the United States of America and the People's Republic of China on Cooperation in Science and Technology, signed at Washington on January 31, 1979, as extended and amended (the Agreement). I have the further honor to propose that the Agreement be extended for five years. In doing so, the implementing accord and protocols that are coterminous with the Agreement shall be extended also.

If your Government agrees with the above proposals this note and your note in reply shall constitute an Agreement between the Governments of the United States of America and the People's Republic of China which shall enter into force on the date of your note in reply.

His Excellency

Yang Jiechi

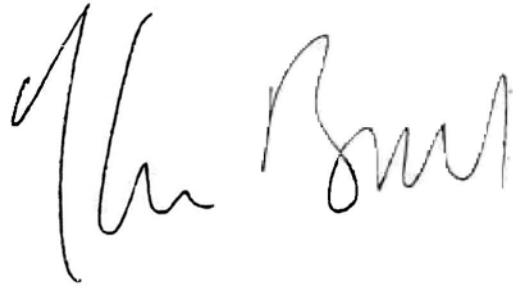
Ambassador

The People's Republic of China

DIPLOMATIC NOTE

Accept, Excellency, the renewed assurances of my  
highest consideration.

For the Secretary of State:

A handwritten signature in cursive script, appearing to read "John B. Smith". The signature is written in dark ink and is positioned to the right of the text "For the Secretary of State:". There are two small, isolated handwritten marks on the left side of the page, one near the middle and one near the bottom.

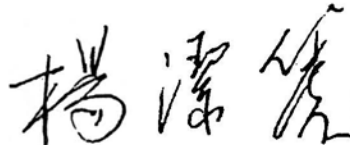
April 25, 2001

The Honorable Secretary,

I have the honor to refer to the Agreement between the Government of the People's Republic of China and the Government of the United States of America on Cooperation in Science and Technology, signed at Washington on January 31, 1979, as extended and amended (the Agreement). I have the further honor to acknowledge the receipt of your note dated April 24, 2001, containing the proposals by the Government of the United States of America for extending for another five years the Agreement and the implementing accord and the protocols that are coterminous with the Agreement.

The Government of the People's Republic of China agrees with the above proposals, and consents that the present note and your note constitute an Agreement between the Governments of the People's Republic of China and the United States of America which shall enter into force on the date of this note.

Please accept, Mr. Secretary, the assurances of my highest consideration.

A handwritten signature in black ink, consisting of stylized Chinese characters, likely 'Yang Jiechi'.

(Yang Jiechi)

Ambassador of the People's Republic of China

The Honorable  
Kenneth C. Brill  
Acting Assistant Secretary  
The Department of State  
The United States of America